

**CLIENT ALERT**

JULY 2008

**New Massachusetts Law Mandates Triple Damages for Employer Wage and Hour Violations**

On April 14, 2008, the Massachusetts legislature passed a bill (Senate Bill 1059) entitled “An Act to Clarify the Law Protecting Employee Compensation”. This law amends Massachusetts’ wage and hour laws, and mandates that employees who prevail in an action under the Commonwealth’s complex wage and hour statutes collect treble damages – three times the amount of actual damages. The new law became effective July 13, 2008.

This law is controversial as it makes treble damages mandatory for *any* violation of the wage and hour laws – even inadvertent violations and violations that occur despite an employer’s good faith efforts to comply with the Massachusetts wage and hour statutes. Until now, awards of treble damages were within the discretion of judges presiding over wage cases, who could take into account factors such as whether the employer acted in good faith or in willful violation of the laws. The automatic penalty imposed by the new law may encourage employees, and employees’ lawyers, to initiate large-scale class action lawsuits against employers in Massachusetts.

The new law followed an interesting and unusual course. The Massachusetts Legislature initially submitted the bill to Governor Deval Patrick in February 2008. Governor Patrick returned the bill without signature and suggested to the Legislature that the bill be

amended to allow employers to show clear and convincing evidence that they acted in good faith. Both chambers of the Legislature rejected his recommendations, and the bill returned to Governor Patrick's desk on April 3. By refusing to act on the bill, Governor Patrick allowed it to become law without his signature.

### **How can employers avoid these penalties?**

The Massachusetts wage and hours laws are technical and intricate, and govern a broad spectrum of wage and hour issues. These include: minimum wage, overtime (and exemptions from overtime), incentive compensation (bonuses and commissions), timely payment of wages, premium pay, tips and tip distribution and pooling, vacation pay, improper deductions, and the potential misclassification of employees as independent contractors.

Because treble damages are now mandatory for even good faith violations of these rules, we are advising our clients to carefully scrutinize their current policies and practices on employee classification, minimum wage, commissions, overtime pay, and similar wage and hour issues.

Should you like to speak with someone about this new law, please contact us.

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